

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

DWIGHT L. VANZANDT,

vs. Plaintiff,

G. SWARTHOUT, Warden,
Defendant.

CASE NO. 13cv2112-LAB (DHB)

**ORDER ADOPTING REPORT
AND RECOMMENDATION; AND**

**ORDER DENYING PETITION FOR
WRIT OF HABEAS CORPUS**

Petitioner Dwight Vanzandt, a prisoner in state custody, filed a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. Pursuant to 28 U.S.C. § 636, this matter was referred to Magistrate Judge David Bartick for report and recommendation. On May 14, 2014, Judge Bartick issued his report and recommendation (the "R&R"), recommending that the petition be denied as time-barred. The R&R found that a gap of 108 days between rounds of California state habeas review was unreasonable, and this is well-supported by binding precedent. The R&R also found that the deficiencies Vanzandt identified in the prison library system did not amount to an "extraordinary circumstance," noting that they hadn't interfered with his ability to file other cogent habeas petitions in a timely fashion. The R&R therefore concluded Vanzandt is not entitled to equitable tolling.

The R&R informed the parties that any objections to the R&R were to be filed by June 6, 2014, and that failure to file objections when due could constitute a waiver of issues not objected to. No objections were filed. The Court in particular notes that failure to file timely

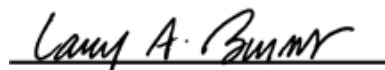
1 objections waives any objection Vanzandt may have had to the R&R's factual findings, such
2 as its recitations of the procedural history, its determination that Vanzandt waited 108 days
3 between rounds of state habeas review, and the fact that prison library conditions did not
4 cause this delay. The R&R's account of the procedural history shows that at the end of 108
5 days, Vanzandt filed two petitions, one in the California Superior Court and one in the
6 California Supreme Court. In addition to the precedents the R&R relies on regarding
7 reasonable gaps between rounds of state habeas review, the Court also notes that it is clear
8 Vanzandt spent some of the 108-day period preparing a second petition. Clearly, the gap
9 would have been shorter had he simply filed the first petition before he began preparing the
10 second.

11 A district court has jurisdiction to review a Magistrate Judge's report and
12 recommendation on dispositive matters. Fed. R. Civ. P. 72(b). "The district judge must
13 determine de novo any part of the magistrate judge's disposition that has been properly
14 objected to." *Id.* "A judge of the court may accept, reject, or modify, in whole or in part, the
15 findings or recommendations made by the magistrate judge." 28 U.S.C. § 636(b)(1). This
16 section does not require some lesser review by the district court when no objections are filed.
17 *Thomas v. Arn*, 474 U.S. 140, 149–50 (1985). The "statute makes it clear that the district
18 judge must review the magistrate judge's findings and recommendations de novo *if objection*
19 *is made*, but not otherwise." *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir.
20 2003) (en banc).

21 The Court has reviewed the R&R, finds it to be correct, and **ADOPTS** it. Because
22 Vanzandt has waived objections to the R&R's factual findings, it is clear the 108-day gap
23 was unreasonable, he is not entitled to tolling, and the petition is time-barred. The petition
24 is **DENIED**, and a certificate of appealability is also **DENIED**.

25 **IT IS SO ORDERED.**

26 DATED: June 13, 2014

27 

28 HONORABLE LARRY ALAN BURNS
United States District Judge